IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION NO 120 of 2002
in
COMPANY PETITION NO 205 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAHALAD HIRA

Versus

O.L. OF G.S.T.C. (NEW SWADESHI MILLS LTD.)

Appearance:

1. COMPANY APPLICATION No. 120 of 2002

MR DS VASAVADA for Petitioner No. 1

OFFICIAL LIQUIDATOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/09/2002

ORAL JUDGEMENT

1. The Applicant - workman has filed this Application in the above Company Petition No.205 of 1996 and taken out Judges summons praying that the respondents be directed to pay the amount of Rs.40,690.75 ps. with 50 per cent penalty and 6% interest till the date of

payment as directed by the Labour Court (Workmen Compensation Commissioner) in W.C.Application No.208 of 1996 passed on 3.1.2002.

2. The Applicant was working with New Swadeshi Mills. On 20.1.1988 when he was on duty, he was asked to open the Fan in tanka. When he was opening the Fan the valves opened from out-side and thereby he received burns injuries right from his legs to his waist. He was taken to the doctor by the workers and the Officers of the Mill and told that if he does not go to the Police then he will be paid compensation and also permanent card. Private treatment was given to him for which he was paid only Rs.1000/-. However, as required under the law the Mill had not informed the Factory Inspector about the incident in question. After the accident he had become almost cripple. When he was not paid any amount, therefore, finally he filed W.C.Application No.208 of 1988 before the Workmen Compensation Commissioner, Ahmedabad, praying for compensation.

3. New Swadeshi Mills was one of the constituents of the Gujarat State Textile Corporation Limited (G.S.T.C.). Winding up order of G.S.T.C. was passed by this Court on 6.2.1997 in Company Petition No.205 of 1996 and the respondent No.1 Official Liquidator has taken possession of all the Units of the G.S.T.C. After hearing the parties the Workmen Compensation Commissioner by his order dated 3.1.2002 allowed the Application of the workman and ordered to pay Rs.40,690.75 ps. with 50 % penalty and 6 % interest from the date of Application i.e. 18.10.1988 till payment is made and also awarded cost of Rs.2000/-.

4. The aforesaid order of compensation with penalty and interest passed by the Workmen Compensation Commissioner was required to be challenged in Appeal within 60 days from the date of the order. However, the said period of limitation expired long back and no Appeal was filed against the order, Annexure : A, passed by the Workmen Compensation Commissioner, therefore, the applicant - workman has filed the present Application in above Company Petition No.205 of 1996 and taken out Judges Summons with a prayer to direct the respondents to pay the amount of Rs.40,690.75 ps. with 50 % penalty and 6 % interest from the date of application i.e. 18.10.1988 till the date of payment.

5. The application was presented before this Court on 18.4.2002. On 19.4.2002 learned Company Judge ordered to issue Notice in the matter making it returnable on

18.6.2002. The Official Liquidator, present before the Court, waived service of Notice on behalf of the respondent No.1. On 18.6.2002 the matter was adjourned to 4.7.2002. However, on that day the matter could not be listed. Thereafter the matter was adjourned to 8.8.2002 and the same was placed before A.R.Dave, J. On that day i.e. on 8.8.2002 the Official Liquidator submitted before His Lordship that the order passed in W.C.Application No.208 of 1988 dated 3.1.2002 was required to be challenged before the appropriate authority, and the said process was likely to take some time. Therefore, hearing of the same was adjourned to 17.9.2002 i.e. yesterday. Yesterday, this matter could not reach, therefore, it was kept today.

6. Today Official Liquidator submitted that he has applied for certified copy of the order from the Workmen Compensation Commissioner to file Appeal against the order dated 3.1.2002 passed in WC Application No.208/88 and so far the certified copy of the order is not received by him. He submitted that the Civil Application for stay along with the application for condonation of delay to be filed in First Appeal are ready, but he could not file First Appeal because so far the certified copy of the order is awaited. He, therefore, requests to grant him some reasonable time to challenge the impugned order passed by the Workmen Compensation Commissioner in favour of the applicant workman.

7. In ordinary circumstances this request would have been granted, but considering the peculiar facts and circumstances of the case I am not inclined to grant any further time to the Official Liquidator, because in the instant case the poor workman met with an accident while he was on duty way back on 20.1.1988, and his lower part of the body from both the legs to his waist were completely burnt. Instead of informing the Factory Manager about the accident the Mill Authority tried to suppress the incident and by giving meagre amount of Rs.1000/- kicked him out from the job. The poor workman finally succeeded in his application filed way back in 1988, almost after 14 years i.e. in January, 2002, and awarded compensation of Rs.40,690.75 ps. only, with 50 per cent penalty and 6 % interest from the date of Application i.e. 18.10.1988. If the other side was really desirous to challenge the impugned order passed by the Workmen Compensation Commissioner in favour of the applicant workman then they would have immediately applied for certified copy of the order from the office of the Workmen Compensation Commissioner and file First Appeal before this Court within the period of limitation,

but they did not do anything in the matter.

8 When the applicant - workman moved this Application for the first time on 19.4.2002 the Official Liquidator was very much present, who waived service of Notice issued by the learned Single Judge on 19.4.2002 making it returnable on 18.6.2002. Thereafter, on 18.6.2002 the matter was adjourned to 4.7.2002. However, on that day for some or the other reason the matter could not be listed on Board and it was listed only on 8.8.2002 before A.R.Dave, J. For the first time on 8.8.2002 the Official Liquidator submitted before His Lordship A.R.Dave, J. that the order passed in W.C.Application No.208 of 1988 dated 3.1.2002 was required to be challenged, for which he prayed for time, and the matter was adjourned. But, so far no such appeal is moved for orders.

9. Law on the point of limitation is more than clear. Recently, the Hon'ble Supreme Court held that if the party allows the period of limitation to be over and thereafter decide to challenge the order and apply for certified copy of the Judgment and order, then in such cases it has to be presumed that the party was not initially interested in challenging the order. Under such circumstances when the order is challenged after expiry of limitation period then in such cases delay cannot be condoned.

10. From the facts stated hereinabove it is clear that at least till 8.8.2002 i.e. for a period of more than 7 months of the order dated 3.1.2002, passed by the Workmen Compensation Commissioner, the Official Liquidator had not even thought of challenging the same before this Court by way of First Appeal. Therefore, even if he files such First Appeal today after obtaining certified copy of the order from the Workmen Compensation Commissioner, along with the application for condonation of delay then also there is remote possibility of condoning delay and entertaining appeal on merits, in view of gross delay of 8 months.

11. If this Application is not decided today then it would be a travesty of justice because the poor applicant workman who suffered burns injury before 14 years way back on 20.1.1988, has not got even a farthing so far though at least he succeeded before the Workmen Compensation Commissioner.

12. In view of the above discussion I am of the considered opinion that when there is an order passed by

the Workmen Compensation Commissioner, in favour of the workman, which is not challenged so far, then looking to the facts and circumstances of the case the same has to be complied with by the Official Liquidator.

13. So far the order dated 3.1.2002 passed by the Workmen Compensation Commissioner in W.C.Application No.208 of 1988 remained unchallenged. Once there is an order from the competent Authority and if it is not stayed by the higher forum then it becomes final and accordingly it has to be implemented forthwith.

14. In view of the above discussion this Application is allowed, and the respondents are directed to comply with the order dated 3.1.2002 passed by the Workmen Compensation Commissioner in W.C.Application No.208 of 1988 in letter and spirit. The order shall be complied with forthwith. At this stage on the request of the Official Liquidator 4 weeks time is given to comply with the order. Accordingly, this Company Application is allowed with no order as to costs.

Date : September 18, 2002 (B.J.Shethna, J.)

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